Commission Implementing Regulation (EU) 2019/1804 of 28 October 2019 amending Implementing Regulation (EU) No 809/2014 as regards amendments of aid applications or payment claims, checks in the integrated administration and control system and the control system in relation to cross compliance

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1804

of 28 October 2019

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008[(1)], and in particular points (a) to (d) and (h) of the first subparagraph of Article 62(2), points (b) and (c) of the first subparagraph of Article 78 and Article 96(4) thereof,

Whereas:

(1) Article 14(4) of Commission Implementing Regulation (EU) No 809/2014[(2)] allows Member States to authorise beneficiaries of the payment for agricultural practices beneficial for the climate and the environment under Regulation (EU) No 1307/2013 of the European Parliament and of the Council[(3)]to modify their single applications with respect to the use of the agricultural parcels declared after the final date for submission of the single application, in duly justified circumstances. During the growing season beneficiaries might need to adapt the cultivation plan as regards the crop or its location. This may be due to changed weather conditions or other agricultural conditions. Beneficiaries of the payment referred to in Article 30 of Regulation (EU) No 1305/2013 of the European Parliament and of the Council[(4)] may be in a similar situation, particularly as regards catch crops. Therefore, it is also appropriate to allow Member States to authorise these beneficiaries to amend the single application or payment claim as regards the use of the parcels declared for the purpose of the payment referred to in Article 30 of Regulation (EU) No 1305/2013. Furthermore, this paragraph should be deleted from Article 14 of Implementing Regulation (EU) No 809/2014 and included in Article 15 thereof, since it concerns amendments to the single application or payment claim. It should also be clarified that these amendments may be done after the general deadlines for notifying amendments and that Member States may set a final deadline for their notification.

(2) Article 15(1b) provides for the amendments of the single application or payment claim where checks by monitoring are carried out. It is appropriate to clarify that this provision

refers to the possibility to amend the single application or payment claims following the provisional results of the checks by monitoring. It should also be specified what these amendments may cover.

(3) Article 15(2) of Implementing Regulation (EU) No 809/2014 sets out the deadline for the amendment of the single application or payment claim. Article 15(3) of that Regulation sets out the situations where the amendment of the single application or payment claim is no longer possible. These rules do not apply in case beneficiaries are subject to checks by monitoring, due to the specificities of these types of checks. It is therefore appropriate to clarify when these beneficiaries may make such amendments. Furthermore, it is appropriate to allow the competent authorities to fix the date for the notification of such amendments at the level of the aid scheme, support measure or type of operation checked by monitoring.

(4) Member States may choose to carry out checks by monitoring for certain aid schemes, support measures, types of operation or requirements and standards relevant for cross-compliance, while maintaining the sample-based on-the-spot checks for other schemes, measures, types of operations or requirements and standards. This may lead to situations in which checks by monitoring reveal findings relevant for determining the compliance with the rules of the schemes, measures, types of operations, or standards and requirements relevant for cross-compliance, subject to the sample-based checks. It is therefore appropriate to provide rules on how to take into account those findings.

(5) It should be clarified that the cross-notification obligation provided for in Article 27 of Implementing Regulation (EU) No 809/2014 applies as well to requirements and standards relevant for cross-compliance. Article 27 should therefore be amended accordingly.

(6) Article 38 of Implementing Regulation (EU) No 809/2014 concerns area measurement. However, paragraph 1 of that Article refers to the possibility to limit the eligibility checks and the area measurement to a randomly selected sample of at least 50 % of the agricultural parcels for which an aid application or payment claim has been submitted. For the sake of clarity, rules regarding the verification of eligibility conditions should be deleted from Article 38 and included under Article 39.

(7) Member States may choose to carry out checks by monitoring for certain aid schemes, or support measures or types of operation in accordance with Article 40a of Implementing Regulation (EU) No 809/2014 while maintaining the sample-based on-the-spot checks that include area measurement in Article 38 of that Regulation for other schemes, measures or operations. This may lead to situations in which an agricultural parcel measured in accordance with the sample-based on-the-spot check is different from the area established as a basis for the calculation of the aid or support where checks by monitoring are applied. Article 38 of Implementing Regulation (EU) No 809/2014 should therefore clarify which of the areas prevails in these cases.

(8) All agricultural parcels declared by a beneficiary and selected for an on-the-spot check need to be measured according to Article 38 of Implementing Regulation (EU) No 809/2014 and their eligibility conditions verified according to Article 39 of the same Regulation. This includes agricultural parcels of permanent grassland or permanent

pasture of large size used in common by several beneficiaries, which may entail a heavy workload for the competent authorities. In order to contain the workload while maintaining an appropriate level of protection of the Union Funds, it is appropriate to provide for the possibility to substitute the measurements and checks of eligibility criteria, commitments and other obligations with checks based on the ortho-images used for the regular updates of the land parcel identification system and lay down the conditions under which the competent authorities may use this possibility.

(9) When the verification of eligibility of the agricultural parcels during the on-the-spot checks of rural development measures is limited to a randomly selected sample of at least 50 % of the agricultural parcels for which a payment claim has been submitted, it may occur that some of the eligibility criteria, commitments and other obligations are not adequately checked. It is therefore appropriate to provide for, in Article 39 of Implementing Regulation (EU) No 809/2014, the selection of an additional risk based sample that allows for the checking of such eligibility criteria, commitment or other obligations.

(10) A key aim of checks by monitoring is to support beneficiaries in fulfilling the eligibility criteria, commitments and other obligations and allow them to remedy the issues revealed. For this purpose, it is important to clarify the obligation of the competent authorities to communicate with beneficiaries in a timely manner, in particular on the warning alerts and the provisional results of the automated analysis of a time-series of satellite data. Therefore, point (d) of the first subparagraph of Article 40a(1) of Implementing Regulation (EU) No 809/2014 should set out key principles regarding the communication of provisional results of the checks by monitoring by the competent authorities.

(11) The second subparagraph of Article 40a(1) of Implementing Regulation (EU) No 809/2014 refers to physical inspections. It is important to clarify that these physical inspections do not imply area measurement unless it is necessary to conclude on the eligibility of the aid or support requested.

(12) Where competent authorities carry out sample-based on-the-spot checks in accordance with Article 38 and Article 39 of Implementing Regulation (EU) No 809/2014, they may limit the checks to a randomly selected sample of at least 50 % of the agricultural parcels for which an aid application or payment claim has been submitted. It is appropriate to allow the same level of flexibility where, in accordance with point (c) of the first subparagraph of Article 40a(1), checks by monitoring require a sample-based control of beneficiaries' agricultural parcels concerned by non-monitorable criteria.

(13) The automated procedure used in the framework of checks by monitoring may reveal findings that are relevant for determining eligibility for area-based schemes, area-based measures or requirements and standards relevant for cross-compliance not checked by monitoring. In order to enable the competent authorities to adapt smoothly to the increasing use of checks by monitoring, it is appropriate to allow those authorities certain flexibility in the application of the requirement that all relevant information at their disposal has to be taken into account for the purpose of determining the fulfilment of eligibility criteria, commitments and other obligations as well as the requirements

and standards relevant for cross-compliance. Such flexibility should be limited in time so as to ensure equal treatment of farmers. Article 40a should therefore be amended accordingly. Furthermore, where such flexibility is used, competent authorities should take into account the relevant findings for the selection of the risk-based part of the control sample of the schemes, measures or types of operation as well as cross-compliance in the following claim year. Article 34(2) and (3), and Article 69(1) of Implementing Regulation (EU) No 809/2014 should therefore be amended accordingly.

(14) Article 40b obliges Member States to notify the Commission about their decision to start carrying out checks by monitoring including certain data. In order to ensure that key information is included in the notification, which may evolve as competent authorities in the Member States extend the application of checks by monitoring, the Commission should provide Member States with a template for the notifications every year by 1 November. It is therefore appropriate to modify the first paragraph of Article 40b accordingly. It is also appropriate to delete the second paragraph of Article 40b since it referred only to claim year 2018 and is therefore obsolete.

(15) Article 40a of Implementing Regulation (EU) No 809/2014 sets out the legal framework for the substitution of area-related on-the-spot checks with checks by monitoring based on Copernicus Sentinels data or other data of at least equivalent value. These data could also be relevant for the determination of the compliance with certain requirements and standards relevant for cross-compliance. With a view to reducing the burden of controls and to maximising the investment needed by the competent authorities to substitute the current on-the-spot checks method with checks by monitoring, a legal framework should therefore be provided to set out the conditions under which checks by monitoring can substitute on-the-spot checks in relation to cross-compliance.

(16) It is appropriate to set a minimum control rate in order to ensure that the checks on requirements and standards relevant for cross-compliance are satisfactory in circumstances where data provided by Copernicus Sentinels satellites are not relevant. Physical inspections in the field should only be necessary if evidence collected using new technologies such as geo-tagged photos and Unmanned Aircraft Systems or relevant documentary evidence does not lead to a conclusive result or if the competent authorities anticipate that none of these types of evidence will be effective in checking the requirements and standards that cannot be monitored.

(17) Checks by monitoring could also support beneficiaries in respecting the requirements and standards relevant for cross-compliance. This can be achieved by requiring national authorities to set up appropriate tools for communicating the provisional results of the checks by monitoring on cross-compliance requirements and standards to the beneficiaries in a timely manner and providing the possibility for the beneficiary to address or remedy the situation before the conclusions are drawn in the control report. This possibility should be without prejudice to the early warning system in Article 99(2) of Regulation (EU) No 1306/2013.

(18) For the purposes of monitoring the implementation of checks by monitoring for cross-compliance, a notification obligation for Member States should be provided.

(19) Implementing Regulation (EU) No 809/2014 should therefore be amended accordingly.

(20) The flexibility introduced by the new paragraph 4 of Article 40a and by Article 70a(3) of Implementing Regulation (EU) No 809/2014, should apply as of 1 January 2019 in order to fulfil its purpose since it is precisely when Member States start applying checks by monitoring and using the new technology associated to these checks that they may be confronted with difficulties to comply with the requirement to take all relevant information into account for the purpose of determining the fulfilment of eligibility criteria, commitments and other obligations as well as the requirements and standards relevant for cross-compliance.

(21) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Direct Payments and the Rural Development Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 809/2014 is amended as follows:

(1) in Article 14, paragraph 4 is deleted.

(2) Article 15 is replaced by the following:

Article 15

Amendments to the single application or payment claim

1 After the final date of submission of the single application or payment claim, individual agricultural parcels or individual payment entitlements may be added or adjusted in the single application or payment claim provided that the requirements under the direct payment schemes or rural development measures concerned are respected.

Changes regarding the use of direct payment scheme or rural development measure in respect of individual agricultural parcels or in respect of payment entitlements already declared in the single application may be made under the same conditions.

Where the amendments referred to in the first and second subparagraphs have a bearing on any supporting documents or contracts to be submitted, such documents or contracts may be amended accordingly.

1a Where a beneficiary has been notified of the results of the preliminary checks as referred to in Article 11(4), that beneficiary may amend the single application or payment claim in order to include all necessary corrections with respect to individual parcels in accordance with the results of those cross-checks where they indicated a potential non-compliance.

1b Where checks by monitoring are carried out in accordance with Article 40a, and the competent authorities have communicated the provisional results at parcel level referred to in point (d) of Article 40a(1), beneficiaries may amend the single application or payment claim regarding adjustment or use of individual agricultural parcels checked by monitoring, provided that the requirements under the direct payment schemes or rural development measures concerned are respected. Individual